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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC,,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.,
OTTOMOTTO LLC, OTTO TRUCKING
LLC

Defendants.

Case No. 3:17-cv-00939-WHA

**DECLARATION OF DEBRA
GRASSGREEN IN SUPPORT OF
DEFENDANT'S MOTION TO MODIFY
THE INTERIM MODEL PROTECTIVE
ORDER**

Hearing:

Date: December 10, 2020

Time: 8:00 AM

Place: Courtroom 12, 19th Floor

Judge: Honorable William H. Alsup

I, Debra Grassgreen, hereby declare as follows:

1. I am co-counsel to defendant Uber Technologies, Inc. ("Uber") in the above entitled action and have personal knowledge of the facts contained in this Declaration, which are true and correct, and if sworn as a witness, I could and would testify competently thereto. I am also bankruptcy counsel to Uber in the bankruptcy case of *Anthony Levandowski*, Case No. 20-30242 (HLB) pending in the United States Bankruptcy Court for the Northern District of California (the

1 “**Bankruptcy Case**”) and in the adversary proceeding pending in the Bankruptcy Case: *Anthony*
 2 *Levandowski v Uber Technologies, Inc.*, N.D. Cal. Bankr., Adv. Pro. No. 20-03050 (HLB) (the
 3 “**Adversary Proceeding**”).

4 2. I submit this declaration in support of the *Defendant’s Motion to Modify the Interim*
 5 *Model Protective Order*.¹

6 3. On March 16, 2017, the Court ordered that plaintiff Waymo LLC (“**Waymo**”) and
 7 Defendants be bound by the Interim Model Protective Order (the “**Protective Order**”). Dkt. 60.

8 4. On February 8, 2018, the Litigation was settled through a settlement agreement
 9 signed by Defendants, Google, Waymo (the business unit that now runs Google’s self-driving car
 10 business), and Alphabet, Inc. (the parent company of both Google and Waymo).

11 5. Paragraph 7 of the Protective Order provides that “[a] Receiving Party may use
 12 Protected Material that is disclosed or produced by another Party or by a Non-Party in connection
 13 with this case *only for prosecuting, defending, or attempting to settle this litigation.*” (Dkt. 50,
 14 Protective Order ¶ 7.1). By way of the Motion, Uber requests permission to modify paragraph 7 so
 15 as to allow the parties to the Adversary Proceeding to (a) review the Protected Materials for the
 16 purpose of evaluating whether they are relevant to the Adversary Proceeding, and (b) use (and
 17 produce in discovery) such materials for prosecuting, defending, and attempting to settle the
 18 Adversary Proceeding, pursuant to a substantially identical protective order already entered in the
 19 Adversary Proceeding.

20 **The Bankruptcy Proceeding**

21 6. On March 4, 2020, Anthony Scott Levandowski (“**Levandowski**”) filed a chapter 11
 22 petition in the United States Bankruptcy Court for the Northern District of California (Case No. 20-
 23 30242) on the same day that the California Superior Court issued a judgment confirming an
 24 arbitration award against Mr. Levandowski and in favor of Google, in the amount of approximately
 25 \$179 million.

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 27
 28 ¹ Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

1 7. On July 6, 2020, Uber filed a proof of claim in the Bankruptcy Case seeking, among
2 other things, damages for Mr. Levandowski's fraudulent inducement of Uber to enter into a certain
3 Indemnification Agreement, dated April 11, 2016.

4 8. On July 16, 2020, Mr. Levandowski commenced the Adversary Proceeding by filing
5 a complaint against Uber seeking declaratory relief, specific performance, damages, and an objection
6 to Uber's proof of claim. On September 3, 2020, the Bankruptcy Court allowed Google LLC to
7 intervene on a single claim in the Adversary Proceeding.

8 9. By way of the Adversary Proceeding, Mr. Levandowski seeks, among other things,
9 contractual indemnification from Uber for the approximate \$179 million dollar arbitration award and
10 judgment. Uber seeks to defend the indemnification claim, in part, by demonstrating (1) that Mr.
11 Levandowski committed certain wrongful acts that constitute an express contractual ground for
12 nullifying the Indemnification Agreement (referred to in the contract as "Post-Signing Specified Bad
13 Acts"), (2) that Mr. Levandowski fraudulently induced Uber into entering into the Indemnification
14 Agreement by concealing and lying about his long-running breaches of duties to Google and his
15 theft of trade secrets, and (3) that the award is not indemnifiable under California law.

16 10. Attached hereto as **Exhibit A** is a true and correct copy of Uber's Answer and
17 Counterclaims to First Amended Complaint in Adversary Proceeding.

18 11. Many of the same facts and events underlying the Litigation are now at issue in the
19 Adversary Proceeding due to the fact that Mr. Levandowski's misconduct that was at issue in this
20 Litigation bears on Uber's defenses to Mr. Levandowski's indemnification claim and some of Uber's
21 counterclaims.

22 12. On September 16, 2020, the Bankruptcy Court entered a protective order in the
23 Adversary Proceeding that is virtually identical to the Protective Order that was entered in this case.
24 Attached hereto as **Exhibit B** is a true and correct copy of the Protective Order entered in the
25 Adversary Proceeding ("**Adversary Proceeding Protective Order**"). If the Court grants the
26 Motion, the parties' use of the materials from this Litigation will be governed by the Adversary
27 Proceeding Protective Order.
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1 13. There is considerable overlap between the witnesses who testified and/or produced
2 documents in the Litigation and those who were identified as witnesses in the Adversary Proceeding.
3 Uber identified 35 witnesses in its Rule 26 Disclosures who also testified in this Litigation.
4 Attached hereto as **Exhibit C** is a true and correct copy of Uber's Rule 26 Disclosures.

5 14. Levandowski also identified additional witnesses who had testified in the Litigation
6 on his Rule 26 Disclosures. Attached hereto as **Exhibit D** is a true and correct copy of
7 Levandowski's Rule 26 Disclosures.

8 15. Uber contends that some of the documents that were produced in this case may be
9 relevant to Uber's claims and defenses asserted in the Adversary Proceeding. Uber therefore issued
10 two subpoenas to Waymo in connection with the Adversary Proceeding requesting that Uber be
11 permitted to review the material that was already in its possession for use in the Adversary
12 Proceeding. While Waymo agreed that Uber may review a very small subset of documents from this
13 case, it objected to Uber's review of substantial portions of the record because of its own
14 confidentiality interests, its position that not all of the materials are relevant to the Adversary
15 Proceeding, and its desire to avoid providing notice to third parties as required by the protective
16 order in this Litigation once a subpoena has been issued.

17 16. To resolve the dispute, Uber presented a letter brief to the Bankruptcy Court on
18 October 7, 2020, asking the court to enforce the subpoenas against Waymo.

19 17. Waymo, Google and Mr. Levandowski each opposed Uber's position and submitted
20 their own letter briefs to the Bankruptcy Court. Waymo argued (among other things) that the better
21 path—rather than having the bankruptcy court enforce the subpoenas—was for Uber to seek to
22 modify the Protective Order in this Court.

23 18. On October 23, 2020, the Bankruptcy Court issued a *Second Order Re Discovery*
24 *Dispute* in which the court noted that the issue of whether the Protective Order should be modified is
25 “one more properly presented to the judge who entered the Protective Order.” (Second Order, Pg. 2;
26 lines 24-26). Attached hereto as **Exhibit E** is a true and correct copy of the Bankruptcy Court order.

27 19. To date, Mr. Levandowski has served document requests and two interrogatories in
28 the Adversary Proceeding on Uber. The document requests require Uber to produce, among other

1 things, materials that it may use or rely upon in the Adversary Proceeding. The interrogatories
2 request Uber to identify all facts and evidence that support its claim that Mr. Levandowski
3 committed fraud or Post-Signing Specified Bad Acts. Attached hereto as **Exhibit F** is a true and
4 correct copy of the Document Request and First and Second Sets of Interrogatories propounded on
5 Uber.

6 20. Uber expects that testimony and evidence in this Litigation is responsive to both the
7 interrogatories and the document requests.

8 21. In light of the Bankruptcy Court's order and in an effort to respond to the discovery
9 propounded on Uber and prepare for trial, Uber seeks permission from this Court to modify
10 paragraph 7 of the Protective Order to allow the parties to the Adversary Proceeding to review the
11 record and discovery from this case and to use such material in the Adversary Proceeding.

12 I declare under penalty of perjury that the forgoing is true and correct. Executed on this 5th
13 day of November 2020.

14 /s/ Debra I. Grassgreen
15 Debra I. Grassgreen
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